E X H I B I T A

DECLARATION

I, Mimi Mendenhall, Office Service Supervisor I, am a custodian of records maintained by the California Attorney General, 6000 State Building, San Francisco, California. A diligent search of the records in the case of Keenan v. Superior Court, S.F. 24309, fails to reveal that the Attorney General was ever served with a motion to strike petition for rehearing and substitution of attorneys in the Keenan case.

Executed under penalty of perjury this 3rd day of June, 1982 at San Francisco, California.

MIMI MENDENHALL

E X H I B I T B

State of California
Department of Justice
George Deukmejian
(Pronounced Duke-may-jin)
Attorney General

SAN FRANCISCO 94102
(415) 557-2544

SUPREME COURT
FILED
FEB 23 1982
LAURENCE P. GILL, Clerk
Deputy

February 23, 1982

Honorable Laurence P. Gill, Clerk
California Supreme Court
4250 State Building
San Francisco, California 94102

Re: Keenan v. Superior Court (San Francisco)
No. 24309

Dear Sir:

You will find attached hereto a notice of substitution of attorneys for the respondent superior court. The respondent hereby adopts the arguments of the People, real party in interest, as contained in their Petition for Rehearing.

Very truly yours,

GEORGE DEUKMEJIAN
Attorney General

MORRIS LENK
Deputy Attorney General

ML:pc
Attachment

ATTORNEY GENERAL--OFFICE COPY

Crim. No. 24309

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MAURICE JOHN KEENAN, Petitioner, vs. SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN FRANCISCO, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	)

SUBSTITUTION OF ATTORNEYS

TO THE COURT AND COUNSEL FOR PETITIONER:

Please take notice that with the consent of the undersigned, the California Attorney General is hereby substituted as attorney of record for the Respondent, Superior Court of the State of California in and for the City and

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County of San Francisco.

DATED: February 23, 1982

HONORABLE DANIEL H. HANLON
Judge of the Superior Court

DATED: February 23, 1982

EDWARD P. O'BRIEN
Assistant Attorney General

DATED: February 23, 1982

GREGORY WINSLOW
Deputy City Attorney

EOB:kgw

DECLARATION OF SERVICE BY MAIL

Re: MAURICE JOHN KEENAN v. SUPERIOR COURT (San Francisco) No. 24309

I, Priscilla Clarfield declare that I am over 18 years of age, and not a party to the within cause; my business address is 6000 State Building, San Francisco, California 94102. I served a true copy of the attached

SUBSTITUTION OF ATTORNEYS

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Honorable Arlo E. Smith, District Attorney
City & County of San Francisco
Hall of Justice
880 Bryant Street
San Francisco, California 94103

Honorable Carl M. Olsen, Clerk
City & County of San Francisco
Hall of Justice
880 Bryant Street, Room 316
San Francisco, California 94103

M. Gerald Schwartzbach
Attorney at Law
1779 Union Street
San Francisco, California 94125

Steven Diaz
Deputy City Attorney
City Hall
San Francisco, California 94102

Each said envelope was then, on February 23, 1982, sealed and deposited in the United States mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

Executed on February 23, 1982, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

Priscilla Clarfield
DECLARANT

E X H I B I T C

PROOF OF SERVICE

I declare that:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within cause. My business address is 1779 Union Street, San Francisco, California 94123.

On April 27, 1982, I served a true copy of the attached REPLY TO BRIEF OF AMICUS CURIAE

by hand delivery on the following parties:

Hon. Daniel M. Hanlon
Judge of the Superior Court
City and County of San Francisco
Hall of Justice
850 Bryant Street
San Francisco, California 94103

Morris Lenk
Office of the Attorney General
State of California
6000 State Building
350 McAllister Street
San Francisco, California 94102

Ms. Leanette Flentroy
Office of the City Attorney
City and County of San Francisco
206 City Hall
San Francisco, California 94102

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 27, 1982 at San Francisco, California.

M. GERALD SCHWARTZBACH

M. GERALD SCHWARTZBACH

E X H I B I T D

PROOF OF SERVICE

I declare that:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within cause. My business address is 1779 Union Street, San Francisco, California 94123.

On May 25, 1982, I served a true copy of the attached MOTION TO STRIKE PETITION FOR REHEARING

by hand delivery on the following parties:

The Honorable Daniel M. Hanlon
Judge of the Superior Court
City and County of San Francisco
850 Bryant Street, Hall of Justice
San Francisco, California 94103

Office of the City Attorney
City and County of San Francisco
City Hall
San Francisco, California 94102

Office of the Attorney General
6000 State Building
San Francisco, California 94102

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 25, 1982 at San Francisco, California.

Bruce E Cohen

BRUCE ERIC COHEN

E X H I B I T E

SUPREME COURT
FILED
FEB 8 1982
LAURENCE P. GILL, Clerk
Deputy

COPY

IN THE SUPREME COURTOF THE STATE OF CALIFORNIA

MAURICE JOHN KEENAN, Petitioner, v. THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; THE PEOPLE, Real Party in Interest.	S.F. 24309

Maurice Keenan, an indigent defendant charged with a capital offense, seeks a writ of mandate to compel respondent superior court to grant his motion for public funds to pay for the services of a second attorney to assist in the preparation of his defense. He relies on Penal Code section 987.9 as authority for this request.[1/] For the reasons that follow,

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1/ Section 987.9 provides:
"In the trial of a capital case the indigent defendant, through his counsel, may request the trial court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. The application for such funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that such an application has been made shall be confidential and the contents of the application

E X H I B I T F

reasons why a second attorney is justified under the facts of this particular case, e.g., the complexity of the issues, the other criminal acts alleged, the large number of witnesses, the complicated scientific and psychiatric testimony, and the extensive pretrial motions, as to some of which review would be sought in the event of adverse rulings.[12/] The very purpose of section 987.9 is to provide the defendant additional assistance in a capital case when the circumstances warrant it; thus the court abused its discretion in failing to address the specific reasons advanced by Schwartzbach in support of the motion.

Moreover, the section provides that the court shall be guided by the need of the defendant for a "complete and full" defense. This language suggests that the Legislature intended that the court make a careful inquiry as to the need for additional assistance and that it apply a higher standard than bare adequacy to a defendant's request for assistance. If it appears that a second attorney may lend important assistance in preparing for trial or presenting the case, the court should rule favorably on the request. Indeed, in general, under a

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12/ The People denigrate defendant's problem by declaring that the practice of the prosecutor in San Francisco is to have only one attorney handle the case. That point overlooks the large staff of attorneys for the People readily available both for trial assistance and for the review process after denial of pretrial motions; defendant must pursue such review while preparing for trial, whereas the prosecutor has the assistance of the Attorney General's office for this purpose.

E X H I B I T G

this court. Bird, C. J., Mosk, J., Kaus, J., Broussard, J., Reynoso, J.

(1st Dist. A016097) — Dunning v. Superior Court of Contra Costa County; Dunning, Real Party in Interest. Petition for hearing granted. The matter is transferred to this court and retransferred to the Court of Appeal, First District, Division One, for consideration of the petition on its merits. Mosk, J., Richardson, J., Newman, J., Kaus, J., Broussard, J., Reynoso, J.

(2 Civ. 64680) — People v. Superior Court of Los Angeles County; Julie Ann Brooks, et al., Real Parties in Interest. Petition for hearing granted. The matter is transferred to this court and retransferred to the Court of Appeal, Second District, Division One, with directions to issue an alternative writ of mandamus to be heard before that court when the proceeding is ordered on calendar. Bird, C. J., Mosk, J., Richardson, J., Newman, J., Kaus, J., Broussard, J., Reynoso, J.

(2 Crim. 38620) — People v. Robert Angus Allan Ladd. Appellant's petition for hearing denied. The petition is ordered refiled as a petition for writ of habeas corpus. The Director of Corrections is ordered to show cause before the Court of Appeal, Second District, Division Three, when the proceeding is ordered on calendar, why the relief prayed for should not be granted. The written return shall be served and filed on or before April 19, 1982. Bird, C. J., Mosk, J., Richardson, J., Newman, J., Kaus, J., Broussard, J., Reynoso, J.

Orders were filed in the following matters extending the time within which to grant or deny a petition for hearing to and including the date indicated, or until a hearing is either granted or denied:

(1 Civ. 48054) — In re Marriage of Plummer. — May 11, 1982.

(1 Crim. 21610) — People v. Bruce A. White. — May 10, 1982.

(4 Civ. 26766) — Charles Leo Green v. Superior Court of San Diego County; People, Real Party in Interest. — May 7, 1982.

(4 Crim. 13490) — People v. Robert Frank [123 Cal.App.3d 771]. — May 12, 1982.

S.F. 24309 — Maurice John Keenan v. Superior Court of the City and County of San Francisco; People, Real Party in Interest [30 Cal.3d 750]. The time for granting or denying a rehearing in the above cause is hereby extended to and including May 7, 1982, or the date upon which a rehearing is either granted or denied.

L.A. 31199 — Marina Point, Limited v. Wolfson, et al. [30 Cal.3d 721]. Respondent's petition for rehearing denied. Mosk, J., and Richardson, J., are of the opinion that the petition should be granted.

(1 Crim. 22717 Div. 3) — People v. Deanne Elizabeth Abrens, et al. Appellants' petition for hearing denied. Bird, C. J., is of the opinion that the petition should be granted.

(3 Crim. 11470) — People v. Raymond William Smith. Appellant's petition for hearing denied. Bird, C. J., and Mosk, J., are of the opinion that the petition should be granted.

(5 Civ. 6507) — Teecaline v. Workers' Compensation Appeals Board, et al. [128 Cal.App.3d 843]. Petition of Sierra Vista Hospital for hearing denied.

L.A. 31547 — Roberto Lopez v. Court of Appeal, Second Appellate District [122 Cal.App.3d 939]. Kaus, J., did not participate. The Court of Appeal, Second District, Division Five is ordered to vacate its opinion filed August 24, 1981 in People v. Superior Court (Lopez), 2 Civ. 61496, and to refile same, transmitting a copy thereof to the superior court and parties pursuant to California Rules of Court 24(a), or do so. The written return shall be served and filed on or before April 21, 1982. Bird, C. J., Mosk, J., Richardson, J., Newman, J., Broussard, J., Reynoso, J.

Crim. 22395 — In re Johnny Ray Wakefield on Habeas Corpus. Pursuant to stipulation of the Attorney General, the San Francisco Superior Court is directed to amend its judgment of January 8, 1981 in People v. Johnny Ray Wakefield, No. 101685, to include credit pursuant to Penal Code section 2900.5 for 55 days of presentence custody between November 15, 1980 and January 8, 1981, and 28 days of good

E X H I B I T H

Marine Serf.

SUPREME COURT
FILED
APR 15 1982
LAURENCE P. GILL, Clerk

Amended

S.F. No. 24309

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

MAURICE JOHN KEENAN,
Petitioner

v.

THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent;
PEOPLE, Real Party in Interest

The Motion to Strike Petition for Rehearing and Substitution of Attorney is GRANTED. The pertinent pages of the petition for rehearing filed by the Attorney General on February 23, 1982, will be regarded as an amicus curiae brief on the issue whether Penal Code section 987.9 authorizes allocation of funds for additional counsel in capital cases (see, e.g., pages 16 to 25 of the petition); and the parties are requested to submit replies by April 27, 1982.

The court further requests that consideration be given to the questions (1) whether section 987.2 or other provisions of the Penal Code permit the appointment of a second counsel in a capital case and (2) whether a request for and hearing on such an appointment should be confidential. Any briefs on these issues are to be filed on or before April 27, 1982, and replies to such briefs shall be filed on or before May 3, 1982.

Bird
Chief Justice

Newman
Justice

Bronson
Justice

Reynoso
Justice

Justice

Justice

Justice

DECLARATION OF SERVICE BY MAIL

Re: MAURICE JOHN KEENAN v. SUPERIOR COURT (San Francisco) No. 24309

I, Priscilla Clarfield declare that I am over 18 years of age, and not a party to the within cause; my business address is 6000 State Building, San Francisco, California 94102. I served a true copy of the attached

MOTION TO VACATE ORDER OF APRIL 15, 1982, STRIKING PETITION FOR REHEARING AND SUBSTITUTION OF ATTORNEY; OPPOSITION TO MOTION TO STRIKE PETITION FOR REHEARING; MOTION TO DISMISS PROCEEDINGS

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Honorable Arlo E. Smith, District Attorney
City and County of San Francisco
Hall of Justice
880 Bryant Street
San Francisco, California 94103

Honorable Carl M. Olsen, Clerk
City and County of San Francisco
Hall of Justice
850 Bryant Street, Room 316
San Francisco, California 94103

Steven Diaz
Deputy City Attorney
City Hall
San Francisco, California 94102

1 copy Court of Appeal
(Hand delivered)

M. Gerald Schwartzbach
Attorney at Law
1779 Union Street
San Francisco, California 94125

Each said envelope was then, on June 3, 1982, sealed and deposited in the United States mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

Executed on June 3, 1982, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

Priscilla Clarfield
DECLARANT

Rev. 3-20-80

SF 1

APPENDIX G

S.F. 24309

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,	)
Appellants,	)
vs.	)
MAURICE JOHN KEENAN,	)
Appellee.	)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the People of the State of California and the Superior Court of the State of California, in and for the City and County of San Francisco, the above-named appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the California Supreme Court ordering the confidential appointment of counsel to represent appellee, entered on May 6, 1982.

The appeal is taken pursuant to 28 U.S.C. section 1257(2).

DATED: July 14, 1982

GEORGE DEUKMEJIAN, Attorney General of the State of California

ROBERT H. PHILIBOSIAN, Chief Assistant Attorney General -- Criminal Division

WILLIAM D. STEIN
Assistant Attorney General

ANN K. JENSEN
Deputy Attorney General

MORRIS LENK
Deputy Attorney General

GEORGE AGNOST
City Attorney

THOMAS J. OWEN
Deputy City Attorney

Counsel for Appellants

CERTIFICATE OF SERVICE BY MAIL

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, Appellants, vs. MAURICE JOHN KEENAN, Appellee.	S.F. 24309

ANN K. JENSEN, a member of the Bar of the Supreme Court of the United States, states:

That her business address is 6000 State Building, in the City and County of San Francisco, State of California; that on July 14, 1982, she served a true copy of the attached Notice of Appeal to the Supreme Court of the United States in the above-entitled matter on counsel for appellee by placing same in an envelope addressed as follows:

M. Gerald Schwartzbach
Attorney at Law
1779 Union Street
San Francisco, California 94125

Said envelope was then sealed and deposited in the United States mail at San Francisco, California, with the postage theron fully prepaid.

ANN K. JENSEN